

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ORDER

On August 5, 2005, defendants Wansing, Kempker, Lombardi, Terry, Bowersox, O'Brien, Weber and Anders filed a motion to dismiss, pursuant to Federal Rule of Civil Procedure 8(a), which requires a complaint to include a short and plain statement of the claim showing the pleader is entitled to relief. Defendants argue that plaintiff's complaint contains nothing beyond conclusory allegations against defendants, and that although plaintiff references exhibits in support of his conclusory allegations, such exhibits were not attached to his complaint served upon defendants, or filed with the court. Defendants argue that plaintiff's allegations are insufficient to put them on notice of the claims against them.

Magistrate Judge William A. Knox found defendants' motion to dismiss to have merit, and granted plaintiff thirty days to amend his complaint identifying his claims against each of the named defendants with sufficient specificity to put defendants on notice of the claims against them.

On January 19, 2005, plaintiff filed an amended complaint in response to defendants' motion to dismiss, specifically identifying defendants Kempker, Wansing, O'Brien, Bowersox, Terry, Weber, Anders, and a John Doe guard. Plaintiff's amended complaint states he is voluntarily dismissing his claims against defendant Lombardi.

"[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). When applying this

standard, the court accepts as true the factual allegations in the complaint and views them in the light most favorable to the plaintiff. *Hishon v. King and Spalding*, 467 U.S. 69, 73 (1984); *Kohl v. Casson*, 5 F.3d 1141, 1148 (8th Cir. 1993).

Upon review, and pursuant to the May 19, 2005, order of the Eighth Circuit Court of Appeals, the court finds plaintiff's claims, as set forth in his amended complaint, are minimally adequate for plaintiff to proceed at this stage in the proceedings and defendants' motion to dismiss is denied.

IT IS, THEREFORE, ORDERED that defendants' motion to dismiss is denied [29]. It is further

ORDERED that plaintiff's claims against defendant George Lombardi are dismissed, without prejudice [44].

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: February 3, 2006
Jefferson City, Missouri